



Economic Impact Analysis Virginia Department of Planning and Budget

18 VAC 48-70 – Common Interest Community Ombudsman Regulations
Department of Professional and Occupational Regulation
December 21, 2009

Summary of the Proposed Amendments to Regulation

Pursuant to §55-530, the Common Interest Community Board (Board) proposes to establish new regulations to require that common interest community (CIC) associations set rules for receiving and considering complaints from members and other citizens. Specifically, these proposed regulations will 1) require CIC associations to distribute their complaint policies and procedures to members, 2) require the maintenance of association complaint records, 3) set time frames in which CIC associations must complete certain actions, 4) indicate the consequences for failure of an association to establish and utilize a complaint procedure and 5) establish procedures and forms for filing a notice of final adverse decision.

Result of Analysis

The benefits likely exceed the costs for most proposed provisions of these new regulations. There is insufficient information to ascertain whether benefits outweigh costs for one of these proposed provisions.

Estimated Economic Impact

In 2008, the legislature made significant changes to the statutory provisions governing CICs. Amongst these changes was a requirement that the Board promulgate regulations that mandate CIC associations “establish reasonable procedures for the resolution of written complaints from the members of an association and other citizens.” By statute, associations must 1) maintain a record of complaints for at least a year, 2) provide complaint forms or written complaint procedures to complainants and 3) provide the Board with information, upon request,

about complaints that have been referred to the Board after an association's final adverse decision.

The statute allows complainants to give notice of a final adverse decision to the Board within 30 days, with payment of a \$25 fee and in accordance with the regulations that the Board is required to promulgate. The statute allows the Board to waive or refund the \$25 fee for good cause shown.

The Board now proposes regulations in accordance with its statutory mandate. These regulations include:

- 1) pertinent definitions,
- 2) a stipulation that any documents that are required to be provided to the Board, or its director, shall be filed with the Department of Professional and Occupational Regulation (DPOR),
- 3) a requirement that CIC associations adopt written complaint procedures either within 90 days of promulgation of these regulations or within 90 days of initial registration with the Board,
- 4) a requirement that associations certify, in each required annual report, that their complaint procedures are current and in effect,
- 5) specific requirements for association complaint procedures which include a time frame of seven days for associations to provide written acknowledgement of the receipt of a complaint and to provide a written notice of final determination after that determination is made,
- 6) requirements, in accordance with the statute, for distribution of association complaint procedures,
- 7) a requirement that associations maintain record of complaints in accordance with statute and a requirement that associations provide documents requested by the director within 14 (calendar) days,
- 8) notice that associations that fail to comply with these promulgated regulations are subject to penalties set by the legislature and

- 9) procedures for the Board receive and review any final adverse decisions that are referred to the Board by complainants.

Most of the provisions of these regulations closely follow and, in some cases, further clarify the statutory requirements with which CIC associations must comply; while there will be costs (bookkeeping costs, costs for providing documentation to the Board and costs for providing required notifications to complainants) associated with these requirements, they can be attributed to the underlying legislation rather than these proposed regulations. To the extent that these regulations allow affected entities to better understand their statutory obligations, these proposed regulations will provide a benefit for those entities.

The provisions of these proposed regulations that entail the Board setting time frames that are outside the statutory framework are the seven day time frame for notification of receipt of complaint, the seven day time frame for notification of final determination and the 14 (calendar) day time frame for CIC associations to provide documentation when requested by the Board or the director. DPOR reports that the Board chose to keep all time frames in calendar days to provide consistency throughout the regulations and that they chose time frames that they considered sufficient for both small and large associations to be able to provide required notifications or gather and deliver required documents. These provisions may, however, put small associations (that have fewer business days per week) at a distinct disadvantage in being able to meet regulatory requirements. Since these are new regulations that will newly impose these requirements, there is no information yet that would indicate whether smaller associations would be disadvantaged enough to outweigh the benefits of having regulatory time frames that allow complainants to receive required notifications quickly and the Board to gather required information expeditiously.

Businesses and Entities Affected

DPOR reports that there are approximately 4,650 CIC associations currently registered with the Board.

Localities Particularly Affected

No locality will be particularly affected by this proposed regulatory action.

Projected Impact on Employment

This regulatory action will likely have no impact on employment in the Commonwealth.

Effects on the Use and Value of Private Property

This regulatory action may change the way some CIC associations manage their complaint processes.

Small Businesses: Costs and Other Effects

Small businesses CIC management firms may incur bookkeeping, documentation and mail costs on account of this regulatory action.

Small Businesses: Alternative Method that Minimizes Adverse Impact

The Board may wish to change their 7 and 14 calendar day time frames for associations so that these time frames are counted in business days. This would allow associations with varying numbers of business days per week the same chance to comply with this regulatory provision.

Real Estate Development Costs

This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

Legal Mandate

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.H of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, Section 2.2-4007.H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other

administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.